



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

AUG 26 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5940 4485**

Mr. Luke Huysman, Owner  
Barbland Dairy, LLC  
8527 Virgil Road  
Fabius, New York 13063

Re: **Administrative Docket No. CWA-02-2013-3053**  
Barbland Dairy, LLC, SPDES Permit No. NYA000095  
Clean Water Act Information Request and Administrative Compliance Order

Dear Mr. Huysman:

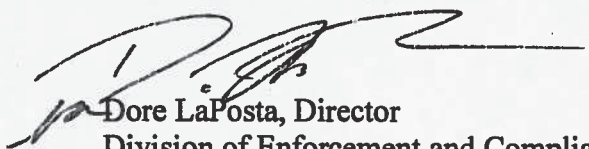
Please find enclosed a combined Information Request and Administrative Compliance Order (together, the "Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to Barbland Dairy, LLC ("Barbland") pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The EPA is issuing the Information Request to require Barbland to provide specific information regarding the condition of its dairy farm located at 1338 Vincent Corners Road in Fabius, New York ("Facility") and the actions needed to attain compliance with the CWA and with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). The EPA is issuing the Administrative Compliance Order because Barbland Dairy, LLC has violated and remains in a state of noncompliance with CWA Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the CAFO General Permit.

Enclosed are two originals of the Order. Please acknowledge receipt of the Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject Barbland Dairy, LLC to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Also enclosed is the Inspection Report for the inspection of Barbland's Facility conducted by the EPA, on April 17, 2013.

If you have any questions regarding the enclosed Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

**Enclosures**

**cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC  
Joseph Zalewski, Regional Water Engineer, NYSDEC Region 7  
Scott Cook, NYSDEC Region 7 (electronic copy)**

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2  
290 Broadway  
New York, New York 10007-1866

**IN THE MATTER OF:**

Barbland Dairy, LLC  
8527 Virgil Road  
Fabius, New York 13063

SPDES Permit No. NYA000095

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of the  
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2013-3053**

**A. LEGAL AUTHORITY**

The following Information Request and Administrative Compliance Order (together the "Order") are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA and permits issued by authorized States there under.
3. 40 C.F.R. § 122.23(a) requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations ("CAFOs"). It also establishes requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.



4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an "animal feeding operation" or "AFO" that is, *inter alia*, a Large CAFO.
10. An AFO is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A "Large CAFO" is defined by 40 C.F.R. § 122.23(b)(4)(i) as, *inter alia*, an AFO that stables or confines as many as or more than 700 mature dairy cows, whether milked or dry.
12. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
13. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
14. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such

monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.

15. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Director makes the following findings of fact and conclusions of law:

1. Luke Huysman, doing business as Barbland Dairy, LLC ("Respondent"), owns and operates a dairy farm located at 1338 Vincent Corners Road, Fabius, New York ("Facility").
2. Respondent is a person under Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
4. The Facility confines approximately 940 mature dairy cows on-site. Therefore, the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6)(i)(A).
5. Production area runoff from the Facility discharges to the West Branch of the Tioughnioga Creek via a manmade drainage ditch. The West Branch of the Tioughnioga Creek is a water of the United States.
6. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
7. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 ("CAFO General Permit" or "Permit"). GP-04-02 has been administratively extended.
8. On December 28, 1999, Respondent applied for and received authorization under the CAFO General Permit pursuant to permit No. NYA000095, and has been covered under the conditions and limitations in the permit at all relevant times addressed by the Information Request and Administrative Compliance Order.
9. The CAFO General Permit authorizes Respondent to discharge pollutants associated with stormwater from Facility to the West Branch of the Tioughnioga Creek under the conditions and limitations prescribed in the permit.
10. On April 17, 2013, the EPA conducted an inspection of the Barbland Dairy, LLC Facility.



11. Based on the Inspection findings, the EPA finds that the Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:

- a. Section VII.A of the CAFO General Permit states that Comprehensive Nutrient Management Plans ("CNMPs") are required to be prepared in accordance with the "Natural Resource Conservation Service Conservation Practice Standard No. NY312". NY312 states that clean water shall be excluded from concentrated waste areas to the fullest extent practicable. At 40 C.F.R. 122.42(e), the Federal CAFO Rule also specifies what a Nutrient Management Plan ("NMP") must address, at a minimum. Specifically, NMPs should ensure that clean water is diverted, as appropriate, from the production area (see 40 C.F.R. 122.42(e)(iii)). At the time of the inspection, the following concentrated waste areas and production areas were exposed to stormwater, in violation of Section VII.A of the Permit:
  - i. Storm drain located east of the feed grain bins and west of Vincent Corners Road was covered with feed, soil and other debris. According to on-site representatives this storm drain discharges stormwater to the West Branch of the Tioughnioga Creek via a drainage ditch located west of the Main Farm;
  - ii. Manure located at the east end of Freestall Barn #1. Stormwater runoff from the east end of Freestall Barn #1 would pool in the unpaved area immediately adjacent to the barn or runoff southwest into a drainage ditch that extends from the east end of the Freestall Barn #1 southwest through the Main Farm and ultimately to the West Branch of the Tioughnioga Creek. At the time of the inspection, EPA inspector McEathron observed discolored water, algae growth and foam in the drainage ditch adjacent to and downhill from Freestall Barn #1; and
  - iii. Manure located at the south end of the Dry Cow Barn where dry pack manure is temporarily stored prior to land application. At the time of the inspection, EPA inspector McEathron observed dry pack manure that had been pushed beyond the limits of the concrete walls and into a partially vegetated bank. Stormwater runoff from the dry pack manure storage location would generally pool at this location immediately uphill from the drainage ditch that flows to the West Branch of the Tioughnioga Creek.
- b. Section IX.O specifies that dates of manure application equipment inspection should be documented as part of the Land Application Area records requirements. According to on-site representatives, manure application equipment has been calibrated but documentation of calibration and equipment inspections were not provided at the time of the inspection. Therefore, Respondent violated Section IX.O of the Permit.
- c. Section X.G of the CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with

the permit. At the time of the inspection, inadequate operation and maintenance was observed at the following locations, in violation of Section X.G of the Permit:

- i. Pooling high flow silage leachate in the collection and distribution system for VTA #1 extending from the high flow discharge point north towards the VTA;
- ii. Silage along the south side of Bunk Silo #1 extending through spaces in the concrete walls and into the drainage ditch;
- iii. Unvegetated banks of Manure Storage #1;
- iv. A vegetation kill zone on the bank of the Woodford Farm Manure Storage; and
- v. Perimeter fencing down around the Satellite Lagoon.

12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

### **C. REQUESTED INFORMATION**

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern in the enclosed Inspection Report within **sixty (60) days** of receipt of this Order.

### **D. ORDERED PROVISIONS**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Respondent shall complete the following items in accordance with the schedule listed below:

| <b><u>Item</u></b>  | <b><u>Completion Deadline</u></b>        |
|---|--|
| <p>i. Develop and implement pollution prevention measures to ensure that clean water is excluded from concentrated waste areas and the production areas to the fullest extent practical at the following locations:</p> <ul style="list-style-type: none"><li>a. Storm drain located east of the feed grain bins and west of Vincent Corners Road covered with feed, soil and other debris;</li><li>b. Manure located at the east end of Freestall Barn #1; and</li><li>c. Manure located at the south end of the Dry Cow Barn where dry pack manure is temporarily stored prior to land application.</li></ul> | <p>Develop and implement immediately</p> |

|  |  |
|--|--|
| ii. Submit to EPA and NYSDEC a written report summarizing the pollution prevention measures taken in response to Item i above. Such report shall include photographs documenting measures implemented and costs associated with each item.   | Within thirty (30) days of receipt of this Order |
| iii. Retain records and reports, in accordance with the CAFO General Permit, for a period of at least five (5) years from the date reported, including but not limited to manure application equipment inspection documentation.   | Within thirty (30) days of receipt of this Order |
| iv. Properly operate and maintain systems of treatment and control in accordance with the CAFO General Permit and NRCS Standards, including but not limited to the following: <ul style="list-style-type: none"> <li>a. High flow silage leachate collection and distribution system for VTA #1;</li> <li>b. Concrete walls and silage containment at Bunk Silo #1;</li> <li>c. Establish and maintain vegetation at Manure Storage #1;</li> <li>d. Establish and maintain vegetation at the Woodford Farm Manure Storage; and</li> <li>e. Repair the perimeter silt fencing around the Satellite Lagoon.</li> </ul> | Within sixty (60) days of receipt of this Order  |
| v. Submit to EPA and NYSDEC a written report summarizing the pollution prevention measures taken in response to Item iv above. Such report shall include photographs documenting measures implemented and costs associated with each item.   | Within sixty (60) days of receipt of this Order  |

### **E. GENERAL PROVISIONS**

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Doughlas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

Barbland Dairy, LLC  
Docket No. CWA-02-2013-3053



"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Agency representative named above, in paragraph E.1., in the enclosed envelope.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.
4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 1/5/26/13

Signed: [Signature]

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Barbland Dairy, LLC  
8527 Virgil Road  
Fabius, New York 13063

SPDES Permit No. NYA000095

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of  
the Clean Water Act, 33 U.S.C. §§ 1318(a) and  
1319(a).

**INFORMATION REQUEST AND  
ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2013-3053**

**ACKNOWLEDGMENT OF RECEIPT OF  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of the Respondent, with the title of,  
\_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-  
2013-3053.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_